

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2010-157435-001 DT

04/12/2012

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT  
K. Waldner  
Deputy

STATE OF ARIZONA

SETH W PETERSON

v.

PAUL RUDOLPH (001)

ELEANOR L MILLER

DESERT RIDGE JUSTICE COURT  
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

**Lower Court Case Number JC 2010-157435.**

Defendant-Appellant Paul Randolph (Defendant) was convicted in the Desert Ridge Justice Court of Impersonating a Peace Officer. Defendant contends the trial court erred in denying his Motion To Suppress, which alleged the officer did not have reasonable suspicion to stop his vehicle. Defendant further contends the evidence was not sufficient to support his conviction. For the following reasons, this Court affirms the judgment and sentence imposed.

**I. FACTUAL BACKGROUND.**

On August 11, 2010, Defendant was charged by Complaint with Impersonating a Peace Officer, A.R.S. § 13-2411(A). Prior to trial, Defendant filed a Motion To Suppress alleging the officer did not have reasonable suspicion to stop his vehicle.

At the hearing on Defendant's motion, Officer Darren Wilson testified he was on duty on February 14, 2010, driving a fully marked Ford Expedition. (R.T. of Apr. 13, 2011, at 9-10.) At about 7:34 p.m., he was driving south on Scottsdale Road between Jomax Road and Happy Valley Road. (*Id.* at 10-11.) At that point, Scottsdale Road has two lanes in both directions, and a center marked lane for left turns. (*Id.* at 11.) In the opposite lanes, Officer Wilson saw two or three vehicles in each lane, and in the median lane another vehicle that appeared to be flashing its high beams. (*Id.* at 12-13, 41.) As he got closer, he saw the vehicle behind was a white Ford Crown Victoria, and saw its headlights were flashing back and forth, in the manner that police call wig-wag lights. (*Id.* at 13-17, 41, 44, 47, 82.) Because the Ford Crown Victoria is commonly used as a police vehicle, and because wig-wag lights are used on emergency vehicles, Officer Wilson thought the vehicle was a police vehicle. (*Id.* at 19-21.) He thus waited until the on-

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coming traffic cleared and made a u-turn so he could assist what he thought was a police officer in making a traffic stop. (*Id.* at 20–22, 41, 43–44, 45.) When Officer Wilson made his u-turn, the other vehicles were  $\frac{1}{2}$  to  $\frac{3}{4}$  of a mile away. (*Id.* at 22, 41, 44–45.) It took him a while to catch up to the Crown Victoria, and by that time, it was ahead of the vehicles it had previously been behind. (*Id.* at 22–23.) Officer Wilson acknowledged he did not see any of the other vehicles move out of the way of the Crown Victoria in order for the Crown Victoria to get ahead of them. (*Id.* at 46–47.) The Crown Victoria moved into the left-turn lane to turn left onto Pinnacle Vista Drive, and Officer Wilson followed behind it. (*Id.* at 23, 48.)

While stopped there, Officer Wilson saw the license plate on the Crown Victoria was not a government license plate, so he then knew the Crown Victoria was not a police vehicle. (R.T. of Apr. 13, 2011, at 25–26, 48, 103–04.) From previous contacts, he realized the vehicle belonged to Defendant, Mr. Paul Rudolph. (*Id.* at 26, 49.) He also knew Defendant had previously been a law enforcement officer, but no longer was one. (*Id.* at 28.)

Once the southbound traffic cleared, Defendant turned left and Officer Wilson followed. (R.T. of Apr. 13, 2011, at 23.) After Defendant had gone for about a block, he pulled over to the side of the road and stopped. (*Id.* at 24, 51.) At that point, Officer Wilson had not activated his emergency lights or siren, nor had he given any command for Defendant to stop. (*Id.* at 24, 48.) Once Officer Wilson stopped his vehicle, he turned on his emergency lights to make other traffic aware of his presence. (*Id.* at 26–27, 50.) Because his patrol vehicle was behind the Crown Victoria, it was not blocking Defendant's vehicle. (*Id.* at 27.)

Officer Wilson then got out of his vehicle, went to the Crown Victoria, and spoke to Defendant. (R.T. of Apr. 13, 2011, at 27–28, 50.) He saw Defendant had a police-style badge on his left knee. (*Id.* at 28, 50.) He told Defendant that, because he was not a law enforcement officer, he should not be using wig-wag lights. (*Id.* at 28–29, 50.) Defendant said he had the wig-wag lights because he knew there is a large police presence on Scottsdale Road. (*Id.* at 29, 34.) Defendant said he stopped his vehicle because he knew someone was following him, and he thought the person might have been following him because of his law enforcement license plate, so he pulled over to let the person pass by. (*Id.* at 33–34.)

At that point, Officer Wilson had fulfilled his purpose for the stop and was going to walk away. (R.T. of Apr. 13, 2011, at 29.) As he was turning around, however, he smelled the odor of alcohol coming from Defendant. (*Id.* at 30, 52.) He then asked Defendant how much alcohol he had that evening, and Defendant said he had none. (*Id.* at 30–31.) Officer Wilson began a DUI investigation that ultimately resulted in Defendant's arrest at about 8:03 p.m. (*Id.* at 31–32, 35, 52, 54–55, 57.)

After the first day's testimony, the trial court continued the hearing for 2 days, and Defendant's attorney recalled Officer Wilson to the stand. (R.T. of Apr. 15, 2011, at 4, 46.) Officer Wilson gave essentially the same testimony he gave at the first day of the hearing. (Officer Wilson saw wig-wag lights, *id.* at 47, 61; Officer Wilson thought it was police vehicle, *id.* at 51, 61;

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Officer Wilson made u-turn to assist what he thought was police officer, *id.* at 61, 79; other vehicles were  $\frac{1}{2}$  to  $\frac{3}{4}$  of a mile away by time Officer Wilson made u-turn, *id.* at 55–56, 61; white vehicle had move from back of pack to front of pack, *id.* at 61–62, 64, 67–68, 83; Officer Wilson saw plate was not government license, *id.* at 53, 56, 61; Officer Wilson realized white vehicle belonged to Defendant, *id.* at 53, 57, 60; Defendant stopped on his own, *id.* at 50–51, 57–58, 75–76; Officer Wilson activated his emergency lights to alert other drivers on roadway, *id.* at 77; Defendant's vehicle was not blocked, *id.* at 77; Officer Wilson told Defendant not to use wig-wag lights, *id.* at 58; Defendant was then free to go, *id.* at 58.) After hearing testimony and the arguments of counsel, the trial court denied Defendant's Motion To Suppress. (*Id.* at 134–36.)

The matter then proceeded to trial. (R.T. of May 20, 2011, at 5.) Officer Wilson gave essentially the same testimony he gave at the 2-day hearing on the motion to suppress. (Officer Wilson saw wig-wag lights, *id.* at 8–9, 10, 23, 27, 34–35; Officer Wilson thought it was police vehicle, *id.* at 10–11; Officer Wilson made u-turn to assist what he thought was police officer, *id.* at 11–12, 13, 36; other vehicles were  $\frac{1}{2}$  to  $\frac{3}{4}$  of a mile away by time Officer Wilson made u-turn, *id.* at 13, 33, 41; white vehicle had move from back of pack to front of pack, *id.* at 9, 13–14, 35, 43–44, 66, 68; Officer Wilson saw plate was not government license, *id.* at 15–16, 48; Officer Wilson realized white vehicle belonged to Defendant, *id.* at 16, 49, 55; Defendant stopped on his own, *id.* at 16; Officer Wilson activated his emergency lights to alert other drivers on roadway, *id.* at 17; Defendant's vehicle was not blocked, *id.* at 17; Officer Wilson told Defendant not to use wig-wag lights, *id.* at 19.)

After hearing the remainder of the testimony and the arguments of counsel, the trial court found Defendant guilty of the charge. (R.T. of May 20, 2011, at 126–27.) On August 10, 2011, the trial court imposed sentence, and on August 12, Defendant filed a timely notice of appeal. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12–124(A).

## II. ISSUES.

### *A. Did the trial court correctly deny Defendant's Motion To Suppress.*

Defendant contends the trial court erred in denying his Motion To Suppress. The resolution of this issue requires a determination whether Officer Wilson seized Defendant, and if so, whether Officer Wilson had a reasonable suspicion to justify a seizure.

1. *Was there a seizure.* In the present case, the testimony established that Defendant stopped his vehicle of his own accord without Officer Wilson's having done anything to direct Defendant to stop. Once Officer Wilson stopped his vehicle, he activated his emergency light in order to alert other drivers he was stopped by the side of the road. The question then is whether, when a vehicle has already stopped and an officer then approaches and activates the emergency lights, is that considered a stop and therefore a seizure.

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The State has cited several cases holding that, when an officer approaches a vehicle already stopped, the act of turning on the emergency lights does not turn that action into a seizure. *Commonwealth v. Evans*, 436 Mass. 369, 372–73, 764 N.E.2d 841, 844 (2002) (at 11:30 p.m., officer stopped behind vehicle already stopped in breakdown lane; court held officer was permitted to do this under community caretaking function; activating police vehicle’s emergency blue lights did not change nature of encounter into seizure); *State v. Hanson*, 504 N.W.2d 219, 220 (Minn. 1993) (vehicle stopped on shoulder of highway at night; officer stopped behind vehicle and activated emergency red lights; reasonable person would have assumed officer was not doing anything other than checking on welfare of person in vehicle); *State v. Johnson*, 85 Ohio App. 475, 479, 620 N.E.2d 128, 130 (1993) (at 2:40 a.m., officers was about to exit parking lot when vehicle pulled into parking lot and stopped next to officer; officer activated overhead lights, stepped out of patrol car, walked over to other vehicle, and asked driver, “What do you need?”; court held, under circumstances of this case, officer’s actions did not amount to seizure); *State v. Dubois*, 75 Ore. App. 394, 398, 706 P.2d 588, 590 (1985) (motorcyclist pulled off road, headlight went off, and motorcyclist began to push motorcycle; officer pulled over behind motorcycle and turned on overhead lights as safety precaution; court held turning on overhead lights did not turn encounter into seizure).

Defendant, on the other hand, has cited several cases holding that, when an officer approaches a vehicle already stopped, the act of turning on the emergency lights is a seizure. *People v. Bailey*, 176 Cal. App. 3d 402, 405–06, 222 Cal. Rptr. 235, 237 (1985) (vehicle was in parking lot of store that was closed; officer pulled up behind vehicle and activated red and blue emergency lights; court held reasonable person would believe officer was directing person not to leave, thus encounter was seizure); *State v. Donahue*, 251 Conn. 636, 642–43, 742 A.2d 775, 779–80 (1999) (at 1:50 a.m., officer saw vehicle drive into parking lot and stop; by time officer had entered parking lot, defendant had positioned vehicle so it was facing exit of parking lot; officer made u-turn and drove behind vehicle, and then activated red, yellow, and blue flashers; officer then exited vehicle and approached defendant; trial court ruled officer’s actions amounted to seizure, and court did not disturb trial court’s ruling); *State v. Morris* 276 Kan. 11, 20, 72 P.3d 570, 577 (2003) (defendant was in vehicle parked with engine running; at 9:15 p.m., officers pulled in behind vehicle and activated red lights and illuminated back of vehicle with spotlight; court held this was “show of authority” that amounted to seizure); *State v. Burgess*, 163 Vt. 259, 261–62, 657 A.2d 202, 203 (1995) (in afternoon, officer saw vehicle parked in pull-off area on side of road; officer pulled up behind vehicle and activated blue emergency lights; court held this amounted to seizure).

In three of the cases cited by Defendant, the other vehicle was already moving when the officer activated the emergency lights in order to get the driver to stop, thus those cases do not speak to the question of activating emergency lights when the other vehicle is already stopped. *Lawson v. State*, 120 Md. App. 610, 614, 707 A.2d 947, 949–50 (1998) (at 7:45 p.m., officer saw defendant in legally parked vehicle; when officer drove by again, vehicle had not moved, so offi-

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cer drove in behind it; vehicle then began backing up; officer activated his emergency lights to “cause the vehicle to stop”; court held officer’s actions amounted to seizure); *State v. Pulley*, 863 S.W.2d 29, 30 (Tenn. 1993) (when officer arrived, defendant’s vehicle was parked, but then started moving; officer activated blue emergency lights to signal defendant to stop; court held this was seizure); *McChesney v. State*, 988 P.2d 1071, 1075 (Wyo. 1999) (at 10:20 a.m., officer received report of vehicle driving erratically; when officer saw vehicle, he began following it; vehicle pulled into parking lot; officer activated red and blue overhead lights in order to effectuate stop, and once vehicle stopped, officer parked directly behind vehicle blocking it from moving; court held this amounted to seizure).

In an Illinois case cited by Defendant, the court held the act of approaching a vehicle already stopped and turning on the emergency lights was a seizure and was not justified by the community caretaking function. *People v. Cash*, 396 Ill. App. 3d 931, 941–42, 922 N.E.2d 1103, 1110–11 (2009) (police had search warrant for Castronovo’s house, but did not want to execute warrant because of weapons in house; during daytime, Castronovo drove away in vehicle, so officers followed him; Castronovo parked vehicle, and defendant joined him; officers pulled in behind Castronovo’s vehicle and “hit the [overhead emergency] lights and siren real quick”; court held officers’ actions amounted to seizure). In another Illinois case, however, the court held, although the act of approaching a vehicle already stopped and turning on the emergency lights was a seizure, that action was justified by the community caretaking function. *People v. Laake*, 347 Ill. App. 3d 1122, 1124–25, 809 N.E.2d 769, 771–73 (2004) (officer received report of possibly intoxicated driver; at 3:16 a.m., officer saw vehicle stopped on shoulder of road with brake lights on; officer pulled in behind vehicle and activated overhead emergency lights to alert other motorists of his squad car; court held officer’s actions amounted to detention, but that detention was permissible under community caretaking or public safety function).

Arizona has also applied the community caretaker/caretaking doctrine. In *State v. Mendoza-Ruiz*, 225 Ariz. 473, 240 P.3d 1235 (Ct. App. 2010), an officer was looking at a pick-up truck matching the description of one involved in a theft when the owner and a friend approached and said his keys were locked inside. The officer patted down the suspects and handcuffed them for investigative detention. While looking through truck’s window, the officer saw a holstered handgun next to the driver’s seat, so she had a locksmith open the truck and then took possession of the gun. The court noted (1) the gun was visible from outside the truck, (2) many people were in the area, and (3) the area was high-crime area, thus the officer was reasonable in entering the truck and taking possession of the gun as an exercise of community caretaker function, thus the trial court erred in granting defendant’s motion to suppress. *Mendoza-Ruiz* at ¶¶ 5–12.

In *State v. Organ*, 225 Ariz. 43, 234 P.3d 611 (Ct. App. 2010), an officer saw a vehicle stopped on the shoulder of the road with its emergency flashers activated, so the officer made a u-turn and activated his emergency lights to alert the driver that he was an enforcement officer. By then, the other vehicle was moving slowly on the shoulder with its emergency flashers off.

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The defendant stopped his vehicle, and when the officer approached him and asked if everything was all right, the defendant said he stopped on side of road because he was tired and sleepy. The officer had the defendant exit the vehicle and walk around to ensure he was not driving impaired and could drive home safely, but became suspicious of the female passenger because, although the defendant said he had known her for several days, he did not know her name. Because the female said she had a prior conviction for prostitution, officer believed he had encountered “prostitution situation.” The officer checked the defendant’s driver’s license and determined it had been suspended, so the officer told him he would have to impound the vehicle. While conducting an inventory search, the officer found a crack pipe, cocaine, and methamphetamine. The court held the initial stop was a reasonable exercise of community caretaking function because the actions of vehicle gave officer reason to believe the driver was having some emergency or trouble and the officer’s action in stopping vehicle was suitably circumscribed to serve the exigency that prompted it. *Organ* at ¶¶ 11–19.

This Court finds the community caretaker/caretaking doctrine applicable to the present case. Although most cases applying this doctrine address the validity of a stop, the stop in the present case is not an issue because Defendant was already stopped when Officer Wilson stopped his police vehicle behind Defendant’s vehicle. (R.T. of Apr. 13, 2011, at 24, 48, 51.) The issue here is whether Officer Wilson’s action of activating his vehicle’s emergency lights amounted to a seizure. This Court concludes it did not. Officer Wilson testified the reason he activated his emergency lights was to make other traffic aware of his presence. (*Id.* at 26–27, 50.) Part of the duties of a patrol officer is to assure the safety of the public. In this Court’s opinion, that would include alerting other drivers of the potential hazard of vehicles parked by the side of the road.

Moreover, to conclude that activating emergency lights would always turn the situation into an investigatory detention requiring reasonable suspicion would put officers in an untenable position. If the officer saw a vehicle stopped by a roadway and believed a check was necessary to determine if there was some problem, the officer would have the choice of either activating the emergency lights and run the risk that any evidence of criminal activity discovered would be suppressed because of a later determination that the officer did not have reasonable suspicion to conduct an investigatory stop, or forgo activating the emergency lights and run the risk that some other drive might collide with the vehicles causing injuries to those involved. On balance, it is this Court’s opinion that, when a vehicle is already stopped and an officer stops to investigate and activates the emergency lights to warn other drivers, that is a proper exercise of the community caretaker/caretaking function.

Whether the officer was properly exercising the community caretaker/caretaking function will depend, of course, on the facts of the case. If the vehicles are stopped in a place that does not pose a danger to other drives, such as a stop in a parking lot, activating the emergency lights may not be justified under the community caretaker/caretaking doctrine. Further, if the officer does something additional, such as positioning the patrol vehicle to block the other vehicle’s path, that may be considered a detention requiring reasonable suspicion. *See, e.g., State v. Canales*, 222

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Ariz. 493, 217 P.3d 836, ¶¶ 2–8 (Ct. App. 2009) (officer was dispatched to apartment complex to investigate suspicious vehicle in parking lot; officer parked directly behind vehicle matching description of vehicle reported, shined lights inside of suspect vehicle, and approached driver’s side window on foot; court concluded officer’s actions conveyed to defendant that he was subject of inquiry and made it physically impossible for defendant to terminate encounter by leaving in his vehicle, thus defendant was detained). In the present case, however, the encounter happened at night, it was at the side of a traveled roadway, and the officer did not block Defendant’s path, thus there were no other facts that would turn this encounter into an investigatory detention.

Defendant contends the State has waived this “public safety” argument because it did not present this argument to the trial court. Defendant is correct that failure to raise an issue at trial waives the right to raise on appeal a claim that would *reverse* the trial court. *State v. Gendron*, 168 Ariz. 153, 154–55, 812 P.2d 626, 627–28 (1991); *State v. Gatliff*, 209 Ariz. 362, 102 P.3d 981, ¶ 9 (Ct. App. 2004). An appellate court is obligated, however, to *affirm* the trial court when any reasonable view of the facts and law might support the judgment of the trial court, even when the trial court has reached the right result for a different reason. *State v. Canez*, 202 Ariz. 133, 42 P.3d 564, ¶ 51 (2002); *State v. LaGrand*, 153 Ariz. 21, 29, 734 P.2d 563, 571 (1987); *State v. Perez*, 141 Ariz. 459, 464, 687 P.2d 1214, 1219 (1984); *State v. Chavez*, 225 Ariz. 442, 239 P.3d 761, ¶ 5 (Ct. App. 2010); *State v. Rumsey*, 225 Ariz. 374, 238 P.3d 642, ¶ 4 (Ct. App. 2010); *State v. Childress*, 222 Ariz. 334, 214 P.3d 422, ¶ 9 (Ct. App. 2009). Thus, an appellate court may consider an argument in support of the result reached by the trial court, even when that argument was not presented to the trial court.

2. *Assuming there was a seizure, was it supported by reasonable suspicion.* If Officer Wilson’s actions were considered to be a seizure of Defendant, they would have to be supported by reasonable suspicion. Defendant contends the trial court abused its discretion in finding Officer Wilson had reasonable suspicion to stop his vehicle. In reviewing a trial court’s ruling on a motion to suppress, an appellate court is to defer to the trial court’s factual determinations, including findings based on a witness’s credibility and the reasonableness of inferences the witness drew, but is to review *de novo* the trial court’s legal conclusions. *State v. Moody*, 208 Ariz. 424, 94 P.3d 1119, ¶¶ 75, 81 (2004); *State v. Gonzalez-Gutierrez*, 187 Ariz. 116, 118, 927 P.2d 776, 778 (1996); *State v. Olm*, 223 Ariz. 429, 224 P.3d 245, ¶ 7 (Ct. App. 2010). A police officer has reasonable suspicion to detain a person if there are articulable facts for the officer to suspect the person is involved in criminal activity or the commission of a traffic offense. *State v. Lawson*, 144 Ariz. 547, 551, 698 P.2d 1266, 1270 (1985). This Court concludes the trial court properly found Officer Wilson knew of articulable facts that led him to suspect Defendant was involved in criminal activity, specifically impersonating a peace officer. That statute provides as follows:

A person commits impersonating a peace officer if the person, without lawful authority, pretends to be a peace officer and engages in any conduct with the intent to induce another to submit to the person’s pretended authority or to rely on the person’s pretended acts.

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A.R.S. § 13-2411(A). In the present case, Defendant was driving a Crown Victoria, which is commonly used by police officers, and had modified its headlights to operate in a wig-wag fashion, which is how lights on a police vehicle commonly operate, and was using those wig-wag lights while following other vehicles. This Court concludes this evidence was sufficient for the trial court to find Officer Wilson had a reasonable suspicion of criminal activity.

Defendant contends, however, these facts did not show what his intent was, and thus were not sufficient to show Defendant was guilty of committing this offense. The fact that a trial court might ultimately conclude a defendant did not violate a particular statute does not negate an officer's statutory right to stop and detain Defendant to investigate a suspected violation of that statute. As stated by the Arizona Supreme Court:

Moreover, when the police make an arrest based upon probable cause, it is not material that the person arrested may turn out to be innocent, and the arresting officer is not required to conduct a trial before determining whether or not to make the arrest.

*Cullison v. City of Peoria*, 120 Ariz. 165, 168, 584 P.2d 1156, 1159 (1978). Because Defendant was following other vehicles and using wig-wag lights while following them, this was sufficient for Officer Wilson to suspect Defendant intended to have those other drivers submit to Defendant's pretended authority and move out of his way.

3. *Did the facts support a reasonable suspicion that Defendant had violated a traffic law.* Arizona courts have held a traffic violation provides sufficient grounds to stop a vehicle. *State v. Orendain*, 185 Ariz. 348, 352, 916 P.2d 1064, 1068 (Ct. App. 1996); *State v. Acosta*, 166 Ariz. 254, 257, 801 P.2d 489, 492 (Ct. App. 1990), *quoting United States v. Garcia*, 897 F.2d 1413, 1419 (7<sup>th</sup> Cir. 1990). In the present case, Defendant violated A.R.S. § 28-947(C) and (D), which prohibit a vehicle from having flashing lights, except for white or amber front lights as long as they flash simultaneously. Thus, Defendant's alternately flashing wig-wag lights were in violation of A.R.S. § 28-947 and provided a legal justification for Officer Wilson's actions.

Defendant contends, however, a violation of A.R.S. § 28-947 would not justify Officer Wilson's stop because Officer Wilson did not give that as a reason he stopped Defendant's vehicle. Officer Wilson's subjective intent is not relevant as long as there were objective factors that justified the stop. As the United States Supreme Court has said:

[T]he fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action.

*Scott v. United States*, 436 U.S. 128, 138 (1978). Or, to state this in another way:

[R]egardless of whether a police officer subjectively believes that the occupants of an automobile may be engaging in some other illegal behavior, a traffic stop is permissible as long as a reasonable officer in the same circumstances *could have* stopped the car for the suspected traffic violation.

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*United State v. Whren*, 53 F.3d 371, 375 (D.C. Cir. 1995) (emphasis original), *aff'd*, *Whren v. United States*, 517 U.S. 806 (1996). Because a reasonable officer could have stopped Defendant for a suspected violation of A.R.S. § 28-947, Officer Wilson was justified in stopping Defendant, even though he did not do so for a violation of that statute.

*B. Was the evidence sufficient to support Defendant's conviction.*

Defendant contends the evidence was not sufficient to support his conviction of impersonating a peace officer. In addressing the issue of the sufficiency of the evidence, the Arizona Supreme Court has said the following:

We review a sufficiency of the evidence claim by determining “whether substantial evidence supports the jury’s finding, viewing the facts in the light most favorable to sustaining the jury verdict.” Substantial evidence is proof that “reasonable persons could accept as adequate . . . to support a conclusion of defendant’s guilt beyond a reasonable doubt.” We resolve any conflicting evidence “in favor of sustaining the verdict.” “Criminal intent, being a state of mind, is shown by circumstantial evidence. Defendant’s conduct and comments are evidence of his state of mind.”

*State v. Bearup*, 221 Ariz. 163, 211 P.3d 684, ¶ 16 (2009) (citations omitted). When considering whether a verdict is contrary to the evidence, this court does not consider whether it would reach the same conclusion as the trier-of-fact, but whether there is a complete absence of probative facts to support its conclusion. *State v. Mauro*, 159 Ariz. 186, 206, 766 P.2d 59, 79 (1988).

As noted above, Defendant was convicted of violating the following statute:

A person commits impersonating a peace officer if the person, without lawful authority, pretends to be a peace officer and engages in any conduct with the intent to induce another to submit to the person’s pretended authority or to rely on the person’s pretended acts.

A.R.S. § 13-2411(A). In the present case, Defendant was driving a Crown Victoria, which is commonly used by police officers, and had modified its headlights to operate in a wig-wag fashion, which is how lights on a police vehicle commonly operate, and was using those wig-wag lights while following other vehicles. This Court concludes this evidence was sufficient for the trial court to find Defendant was pretending to be a peace officer. As for Defendant’s intent, as noted above, intent may be shown by circumstantial evidence. *Bearup* at ¶ 16. When Officer Wilson first saw Defendant, he was behind four to six other vehicles that were blocking both lanes of the road, and Defendant had activated the wig-wag lights. Once Officer Wilson caught up to Defendant, he was ahead of those vehicles. As found by the trial court, this “was done to get the other cars out of the way.” (R.T. of May 20, 2011, at 126.) The evidence was thus sufficient to support the conviction.

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III. CONCLUSION.

Based on the foregoing, this Court concludes the trial court properly denied Defendant's Motion To Suppress, and further concludes the evidence was sufficient to support the conviction.

**IT IS THEREFORE ORDERED** affirming the judgment and sentence of the Desert Ridge Justice Court.

**IT IS FURTHER ORDERED** remanding this matter to the Desert Ridge Justice Court for all further appropriate proceedings.

**IT IS FURTHER ORDERED** signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen

THE HON. CRANE MCCLENNEN  
JUDGE OF THE SUPERIOR COURT

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